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Message Text

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61
ACTION EA-10

INFO OCT-01 ISO-00 L-02 JUSE-00 SCSE-00 SCA-01 SNM-02

DEAE-00 SY-04 RSC-01 /021 W
---------- 107447
P 190141Z DEC 74
FM AMEMBASSY TOKYO
TO SECSTATE WAHDC PRIORITY 6824

UNCLAS TOKYO 16493

E.O. 11652: N/A
TAGS: GEN, JA
SUBJECT: TAKING OF DEPOSITION IN JAPAN

REF: TOKYO 16271, STATE 276034 AND PREVIOUS

1. IN COMPLIANCE WITH GOJ REQUEST A MEETING WAS HELD AT THE MFA ON 16TH DECEMBER TO DISCUSS THE REQUESTED TAKING OF DEPOSITIONS FROM THE TWO AMERICAN PRISONERS IN YOKOSUKA PRISON. AS THE MEETING BEGAN IT BECAME IMMEDIATELY APPARENT THAT CERTAIN POINTS OF TH REQUEST WERE CAUSING THE GOJ OFFICIALS DIFFICULTYIN MAKING FAVORABLE DECISIONS. MR. YUSUKE YOSHINAGA, COUNSELOR FOR THE MINISTRY OF JUSTICE AND MR. SUSUMU TANAKA REPRESENTED THE 1ST NORTH AMERICAN SECTION OF THE MINISTRY OF FOREIGN AFFAIRS WERE PRESENT. GOJ OFFICIAL STATED THAT TO THEIR KNOWLEDGE THERE HAS NEVER PREVIUSLY BEEN A REQUEST FOR A CRIMINAL DEPOSITION IN JAPAN AND THE ENTIRE MATTER WOULD REQIRE CONSIDERABLE "STUDY". THEY CLAIM IT WILL BE NECESSARY TO ASCERTAIN IF THE U.S.-GOJ CONSULAR TREATY PROVIDED FOR THE TAKING OF THE DEPOSITION AND IF SO, COULD THE JAPANESE INTERPRETATION OF "DEPOSITION" BE APPLIED. BY THIS THEY MEAN THAT THE COMMISSIONED CONSULAR OFFICER PRESENT AT THE PROCEEDING WOULD ACTUALLY ASK THE QUESTIONS OF THE DEFENDANTS IN JAPANESE CUSTODY. IF THIS WERE POSSIBLE THE JAPANESE OFFICIALS STATED THAT THEY WERE INCLINED TO THINK THAT GOJ WOULD PROBABLY DECIDE FAVORABLY ON ALL OTHER POINTS OF THE REQUEST. THE GOJ OFFICIALS WERE INFORMED THAT THEIR REQUEST WOULD TRANSMITTED TO THE DEPARTMENT OF STATE.

2. EMB HAS ENDEAVORED TO EMPHASIZE THAT THE TAKING OF A DEPOSITION
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IS ONLY FOR THE PURPOSE OF OBTAINING EVIDENCE TO BE USED IN A TRIAL

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AND IS NOT OF ITSELF A TRIAL. THE FACT THAT PROSECUTING ATTORNEYS WILL PROPOUND THE QUESTIONS AND THE DEFENDANTS ARE PRESENT IN PERSON WITH THEIR ATTORNEYS, TOGETHER WITH THE VIDEO TAPE RECORD, CONFUSES GOJ OFFICIALS.

3. THE GOJ OFFICIALS FURTHER STATED THAT THEY DID NOT BELIEVE THAT THE PRESENT CONSULAR TREATY PROVIDED FOR U.S. PROSECUTORS OR DEFENSE ATTORNEYS TO ENGAGE IN "LEGAL PROCEEDINGS" IN JAPAN. THEY REQUESTED THE EMBASSY TO PROVIDE THEM WITH COPIES OF OTHER U.S. CONSULAR TREATIES WITH MAJOR WORLD POWERS AND INFO AS TO WHETHER ANY SIMILAR PROCEEDINGS HAVE BEEN PERMITTED IN OTHER COUNTRIES WHICH THEY COULD STUDY PRIOR TO ARRIVING AT THEIR DECISION. IT WAS ALSO REQUESTED THAT THEY BE INFORMED OF THE ORIGIN OF THE NARCOTICS INVOLVED IN THIS CASE, THE FULL DETAILS OF THE CASE AGAINST THE DEFENDANTS AND ANY JAPANESE INVOLVEMENT.

4. BECAUSE OF THE URGENCY OF GETTING DECISION, AND NEED TO SOMEHOW SUGGEST A SOLUTION TO THE JAPANES AUTHORITIES WHICH WOULD ENABLE THEM TO COOPERATE AND YET NOT MAKE THE PRECEDENT SETTING DECISIONS WHICH CONFRONT THEM, EMB IS THINKING OF TWO POSSIBLE ALTERNATIVEES. FIRST IS THE POSSIBILITY OF REQUESTING THAT WITNESSES BE PAROLED OR FURLOUGHED TO MILITARY AUTHORITIES FOR ONE WEEK WHO WOULD TAKE WITNESSES TO U.S. FOR THE DEPOSITION, POSSIBLY TRAVIS AFB AND THEN RETURN THEM TO JAPAN AND THE PRISON. THIS WOULD PRESENT SOME COMPLICATIONS STATESIDE SUCH AS POSSIBLE HABEAS CORPUS ACTION ON THEIR PART IF WITNESSES RESISTED RETURNING. FUNDING, TRANSPORTATION BY AF, ETC ARE ALSO PROBLEMS. ANOTHER POSSIBLE ALTERNATIVE IS TO REQUEST JAPANESE AUTHORITIES TO PAROLE OR FURLOUGH THE WITNESSES TO THE EMBASSY UNDER MILITARY CONTROL AND TAKE THE DEPOSITION ON US EMBASSY PROPERTY THUS BYPASSING THE QUESTION OF WHETHER A U.S. LEGAL PROCEEDING OR TRIAL IS TAKING PLACE ON JAPANESE SOIL.

5. SUMMARY: EMB REQUESTS INFORMATIN SET FORTH IN PARA 3 AND DEPT OPINOON ON ADVISIBILITY OF APPROACHING GOJ ON ALTERNATIVES INDICATED IN PARA 4.
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Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
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Document Unique ID: 00
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Enclosure: n/a
Executive Order: N/A
Errors: N/A
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ISecure: 1
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